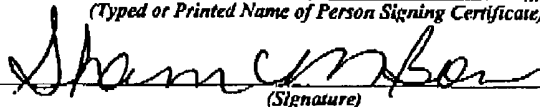


1773

<b>CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)</b>			<b>Docket No.</b>
Applicant(s): Robert A. Migliorini, et. al.			10212/2
<b>Application No.</b> 09/747,537	<b>Filing Date</b> December 22, 2000	<b>Examiner</b> Kevin R. Kruer	<b>Group Art Unit</b> 1773
Invention: Multilayer Oriented Polypropylene Films With Modified Core			
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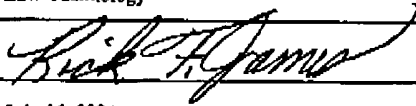
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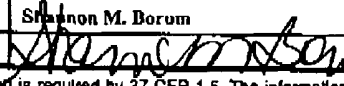
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		Filing Date	December 22, 2000
		First Named Inventor	Robert A. Migliorini
		Art Unit	1773
		Examiner Name	Kevin R. Kruer
Total Number of Pages in This Submission	5	Attorney Docket Number	10212/2

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Appl. No. : 09/747,537 Confirmation No. 2084  
Applicant : Robert A. MIGLIORINI *et al.*  
Filed : December 22, 2000  
TC/A.U. : 1773  
Title : "Multilayer Oriented Polypropylene Films with Modified Core"  
Examiner : Kevin R. KRUER  
Docket No. : 10212/2  
Customer No. : 23455 Date: July 16, 2004

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**APPELLANTS' REPLY BRIEF UNDER 37 CFR 1.193(b)(1)**

Sir:

Appellants file this their Reply Brief to the Examiner's Answer stamped "Mailed May 19, 2004, Group 1700" with the Office Communication being mailed on May 20, 2004.

This Reply Brief is being filed in triplicate.

**Arguments**

Section 11 of the Examiner's Answer provides arguments responsive to Appellants' Brief. On page 16 of the Examiner's Answer, it is asserted that Blemberg teaches that interlayer adhesion of the multi-layer films taught by Schloegl and Peiffer can be improved by blending components of a sealable layer into adjacent layers. This assertion is responsive to Appellants' argument that there is no motivation to combine the references because no interlayer adhesion problems exist in films as taught by Schloegl and Peiffer. The Examiner's Answer continues by

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concluding that it is unnecessary that the primary reference provide motivation for the proposed modification, rather, the prior art as a whole must suggest the proposed modification. Appellants agree that the prior art as a whole determines whether there is motivation to combine the teachings of the references. However, in this instance, the prior art as a whole, teaches that adhesion problems between adjacent film layers exist only when the adjacent film layers are composed of different materials, which is not the case with the Schloegl and Peiffer films.

The lack of adhesion problems between similar adjacent film layers is confirmed by the Migliorini Declaration in the current record. Therefore, since there are no interlayer adhesion problems in films as taught by Schloegl and Peiffer, absent another reason to combine the references found in the prior art, there is simply no motivation to blend components of a sealable layer into adjacent layers.

The Examiner's Answer attempts to supply motivation to combine the teachings by asserting that the "prior art recognizes that oriented isotactic polypropylene films are known to exhibit poor adhesion to sealing layers, such as polyethylene compositions". However, the Examiner's Answer fails to identify the "prior art" relied upon for this conclusion. The burden is on the Examiner to demonstrate motivation to combine references to establish a *prima facie* case of obviousness. This burden is not discharged by a conclusory statement unsupported by prior art of record. To establish a *prima facie* case, the prior art must contain some suggestion or incentive to motivate modifying a reference or to combine references. *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed.Cir. 1988).

On page 17, the Examiner's Answer addresses rejections based upon the teachings of the Keller patent. In particular, the Examiner's Answer discusses motivation for adding a polymeric modifier, as taught by Keller, to conventionally biaxially oriented films as disclosed by Peiffer and Schloegl. In essence, the Examiner's Answer argues that because any orientation process provides strain to a film, there is motivation to use the polymeric modifier of Keller in any film subjected to any orientation process. The Examiner's Answer relies upon the Migliorini

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Declaration as providing support for the conclusion that any orientation process creates strain within a film. The Migliorini Declaration only addresses biaxial orientation processes rather than any "any orientation process" as asserted by the Examiner's Answer.

However, more importantly, the Migliorini Declaration goes on to note that while conventional biaxial orientation processes leave a film in a "strained state", these processes, such as disclosed by Peiffer and Schloegl, are accomplished without "problems of tearing or breaking the coextruded biaxially oriented films during the stretching process. Therefore, it is unnecessary to modify the core layers of such films to prevent tearing or breaking" of these films. See, Migliorini Declaration paragraphs 9-11.

Accordingly, contrary to the Examiner's Answer's assertion, the Migliorini Declaration lends no support to the theory that there is motivation to include a polymeric modifier as taught by Keller in the conventionally biaxially oriented films disclosed by Peiffer and Schloegl. Moreover, none of the prior art references of record provide such support. The only asserted support is the statement in the Examiner's Answer that: "the Examiner has taken the position that any oriented film will undergo strain and is, therefore, susceptible to tearing." It is respectfully submitted that motivation to combine references must come from the prior art itself which, in this case, provides no such motivation. Contrary to the assertions of the Examiner's Answer, the Migliorini Declaration only confirms that there is no motivation. A *prima facie* case of obviousness has not been established. A Section 103 rejection may rely upon logic and sound scientific principles. However, the rejection must provide some evidentiary basis for the existence and meaning of the scientific principle relied upon. *In re Grose*, 592 F.2d 1161, 1167-68, 201 U.S.P.Q. 57, 63 (C.C.P.A. 1979). No evidentiary basis is found in the current appeal record.

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## CONCLUSION

Appellants respectfully submit that the previously filed Appellant's Brief and the foregoing arguments overcome all final outstanding rejections in this Application. Reversal of all rejections by this Honorable Board is respectfully requested.

Respectfully submitted,

Date: July 15, 2004

  
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